IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Notice of Motion No.1033 of 2007
In
Appeal No.553 of 2004
In
Company Petition No.109 of 2004

Shri Salim Akbarali Nanji. .. Appellant.

Vs.

Development Credit Bank Ltd.
& Anr. .. Respondents

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The applicant in person.

Dr.Virendra Tulzapurkar, Senior Counsel, with S/Shri Pravin Samdhani with Daniel Arif i/b M/s.Res Legal for Respondent No.1.

Shri Vishal Shriyan i/b Udwadia Udeshi & Co. for Respondent No.2.

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CORAM : R.M.S.KHANDEPARKAR &
D.G.KARNIK, JJ

DATED : 23RD MARCH, 2007

P.C.:

1. Heard the applicant appearing in person, Dr.Virendra Tulzapurkar, learned Senior Counsel for Respondent No.1-bank and Shri Vishal Shriyan for Respondent No.2.

2. By this motion, the Respondent No.1-bank seeks modification of the order dated 2nd November, 2004 passed by this Court restraining the Respondent No.1-bank from taking any action of writing off any debts.

3. By filing Company Petition No.109 of 2004 the respondent-bank sought approval of the Court for reduction in Securities Premium Account by Rs.62.45 crores by writing of non performing assets or bad debts. By an order dated 5th August, 2004, Learned Company Judge allowed the petition. That decision has been challenged by the appellant by filing the present appeal (Appeal No.553 of 2004). The appeal was admitted on 14th September, 2004 but no interim relief was initially granted. However, subsequently, by an order dated 2nd November, 2004, this Court granted interim relief restraining the respondent-bank from writing off further debts. Modification of that order is sought by this motion.

4. Dr.Tulzapurkar, learned senior counsel for the bank submitted that granting of an injunction from further writing off the debts was uncalled for inasmuch as that was not the subject matter of the

appeal. The appeal is only in respect of the order granting permission for writing off the debts of Rs.62.45 crores by utilising the share premium account. The bank however, submitted Dr.Tulzapurkar, did not take any exception to the said order in view of the fact that in another appeal pending before the Hon'ble Supreme Court, it had granted stay for writing off the debts. He invited our attention to the decision of the Supreme Court in Civil Appeal No.6715 of 2004 dated 11th May, 2006 between the same parties. In the said decision, the Supreme Court has considered the question of right of the respondent-bank of writing off the bad debts. In the said decision, the Hon'ble Supreme Court observed thus:

> "It will thus appear from the facts noticed above that the writing off of NPAs is an exercise undertaken to clean the balance sheet, and is an internal accounting procedure. It does not require the permission of the Reserve Bank of India but as explained by the Reserve Bank of India, banks usually make such a request as a matter of practice and permissions are granted by the Reserve Bank after considering all relevant aspects of the matter. In the case where a banking

company appropriates sums from the reserve fund or the share premium account, it is required to report to the Reserve Bank of India within 21 days explaining the circumstances relating to such appropriation."

5. The Hon'ble Supreme Court has affirmed the right of the bank to write off bad debts which is a regular exercise undertaken to cleanse the balance sheet.

6. Learned counsel for the Reserve Bank of India submitted before us that no permission of the Reserve Bank of India is necessary for the purpose of writing off debts in usual course of business. However, wherever a reserve fund or a share premium account is utilised by the bank for writing off the debts, a report is required to be sent by the concerned bank to the Reserve Bank of India within 21 days of the action explaining the circumstances under which the action has been taken. The Reserve Bank of India thereupon takes appropriate action on such report. Dr.Tulzapurkar, learned senior counsel for the bank submitted that the bank would follow all the requirements of the Reserve Bank of India and would intimate it about the actions taken if required by law

or rules or any regulation.

7. The order dated 2nd November, 2004 was passed by this Court before the Hon'ble Supreme Court laid down the law in its decision dated 11th May, 2006. As per the law declared by the Hon'ble Supreme Court, a bank is entitled to clean up its balance sheet by writing off the debts without obtaining permission of the Reserve Bank of India and only intimation is required to be sent to it in that regard. Learned counsel for the Reserve Bank of India also confirms that no prior permission from the Reserve Bank of India is necessary for writing off the debts.

8. In view of this position, the direction issued by this Court in its order dated 2nd November, 2004 to Respondent No.1-bank not to take any action for further writing off the debts needs to be modified. It is clarified that we are not granting any permission to Respondent No.1-bank to write off debts but we are only removing the embargo which was put on the respondent bank by the order dated 2nd November, 2004. The respondent bank shall, however, comply with all the requirements of law and the directions, if any, issued by the Reserve Bank of India under the Banking Regulations Act, 1949 before taking any action

of writing off bad debts.

9. For these reasons, the motion is allowed in part and the words viz. "We also direct that the first respondent-Bank shall not take any further action of writing off the debts" in the order dated 2nd November, 2004" shall stand deleted.

(R.M.S.KHANDEPARKAR, J)

(D.G.KARNIK, J)